



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 9

Colonel Bert Cantwell  
Superintendent  
Kansas Highway Patrol  
122 SW Seventh  
Topeka, Kansas 66603

Re: Automobiles and Other Vehicles -- Drivers' Licenses --  
Driving While License Cancelled, Suspended or Revoked;  
Non-resident Motorists

Synopsis: Non-resident motorists who hold a valid driver's license in their state of residence are granted the privilege of operating a motor vehicle in this state, and do not need to obtain a Kansas driver's license. However, such a privilege may be suspended or revoked by the division of vehicles in the same manner and for the same reasons as a Kansas driver's license may be suspended or revoked. Accordingly, a non-resident whose license is suspended or revoked in his or her home state forfeits the right to operate a motor vehicle in Kansas, and is subject to the criminal penalties of K.S.A. 8-262 should he or she continue to drive in Kansas. It should be emphasized that it is the privilege to operate a vehicle which is subject to suspension or revocation, and not the license itself, which may be suspended or revoked only by the issuing state. Cited herein: K.S.A. 8-236, 8-251, 8-252, 8-258, K.S.A. 1984 Supp. 8-262, K.S.A. 8-1430, 8-1441, K.S.A. 1984 Supp. 8-1567.

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Dear Colonel Cantwell:

As Superintendent of the Kansas Highway Patrol, you request our opinion on a situation involving non-resident motorists who

operate motor vehicles on the roads and highways of this state. Specifically, you ask the following three questions:

- (1) Is the license of a non-resident driver which has been canceled, suspended or revoked in the issuing state also canceled, suspended or revoked in this state?
- (2) Can a non-resident driver who operates a vehicle in this state be charged with the offense of driving with a canceled, suspended or revoked license unless formal action has been taken by Kansas authorities?
- (3) Would a law enforcement officer be authorized under Kansas statutes to seize the non-resident driver's license in the above situations for the purpose of surrendering that license to the issuing state?

Initially, it may be noted that Kansas statutes do not require non-residents to obtain drivers' licenses issued by the division of vehicles prior to operating a motor vehicle in this state. K.S.A. 8-236 sets forth a number of exemptions from the license requirements of the motor vehicle drivers' license act (K.S.A. 8-234a et seq.). One of these applies to: "a non-resident who is at least sixteen (16) years of age and who has in his or her immediate possession a valid license issued to such non-resident in his or her home state." K.S.A. 8-236(a)(2). In lieu of issuing a separate license to non-residents, Kansas statutes provide that such persons are provided with the "privilege" of operating a vehicle in Kansas. K.S.A. 8-1430(c), K.S.A. 8-1441. This privilege may be suspended or revoked in the same manner as the license issued to a Kansas driver may be suspended or revoked. K.S.A. 8-251(a).

However, actual suspension or revocation of the non-resident's license must be by the issuing state, for K.S.A. 8-251(b) states:

"The division is further authorized and directed, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor-vehicle laws of this state or notice of the forfeiture of any bond or collateral given for such violations, to forthwith forward a certified copy of such record or notice to the motor-vehicle administrator in the state wherein the person so convicted is a resident."

By implication, information concerning the conviction is forwarded to the issuing state for its information and possible action. The next statute in the act, K.S.A. 8-252, deals with the reverse situation (commission of an offense by a Kansas driver in another

state) and authorizes the division of vehicles to suspend or revoke the individual's license for the same period of time which his or her privilege to drive was suspended or revoked by the state in which the offense occurred. When read together, the statutes clearly evince an intent to leave to the issuing state, whether Kansas or otherwise, the authority to take action against drivers' licenses which it issues. See, generally, 7A Am.Jur.2d Automobiles and Highway Traffic, §107 (1980).

In light of the above, your specific questions may now be addressed. First, if a person from another state has had his or her driver's license canceled, suspended or revoked, they no longer possess "a valid license . . . issued in his or her home state" [K.S.A. 8-236(a)(2)], and so do not possess the privilege of operating a motor vehicle in Kansas. K.S.A. 8-258. Again, it should be emphasized that it is not the person's license which is affected by Kansas law, for action against the license has already been taken by the issuing authority. Rather, it is the privilege to drive, which for non-residents is equated with a driver's license, which is affected.

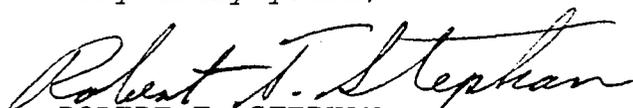
Second, in the event that a non-resident is found to be operating a vehicle while his or her driver's license is under suspension or revocation by the issuing state, he or she is subject to the penalties of K.S.A. 1984 Supp. 8-262. The "formal action" you refer to in your question has already been taken by authorities in the issuing state, and Kansas should recognize the validity of such a suspension or revocation. Prosecution under K.S.A. 1984 Supp. 8-262 honors the issuing state's action and does not usurp that state's control over the drivers' licenses of its residents. The individual would be driving "at a time when such person's privilege to do so is canceled, suspended or revoked," and the fact that such action was taken by another state, and not Kansas, does not render the driver immune from prosecution under K.S.A. 1984 Supp. 8-262.

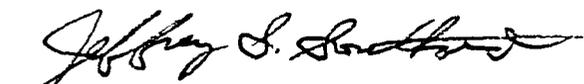
Finally, you inquire whether a Kansas law enforcement officer is authorized to seize the license of a non-resident driver in the event that it is found that the person's license has been suspended or revoked in the issuing state. In our opinion, such an action would be superfluous, in that the license has already been rendered invalid by the action of the issuing state. Even in the event that the non-resident's license is still valid, and he or she is charged and convicted of a traffic offense in Kansas (such as driving under the influence of alcohol), only the privilege to drive may be revoked, not the license itself. Action against the license is taken by the issuing state, following notice by Kansas authorities. See, e.g. K.S.A. 1984 Supp. 8-1567(j), K.S.A. 8-251(b). The same conclusions were reached in Attorney General Opinion No. 75-149, which opinion is affirmed.

Colonel Bert Cantwell  
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In conclusion, non-resident motorists who hold a valid driver's license in their state of residence are granted the privilege of operating a motor vehicle in this state and do not need to obtain a Kansas driver's license. However, such a privilege may be suspended or revoked by the division of vehicles in the same manner and for the same reasons as a Kansas driver's license may be suspended or revoked. Accordingly, a non-resident whose license is suspended or revoked in his or her home state forfeits the right to operate a motor vehicle in Kansas, and is subject to the criminal penalties of K.S.A. 8-262 should he or she continue to drive in Kansas. It should be emphasized that it is the privilege to operate a vehicle which is subject to suspension or revocation, and not the license itself, which may be suspended or revoked only by the issuing state.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw